

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff

v.

ANTHONY PELAYO,

Defendant.

CASE NO. CR18-217RSM

ORDER DENYING THIRD MOTION FOR
RECONSIDERATION

This matter comes before the Court on the Third Motion for Reconsideration filed by Defendant Anthony Pelayo. Dkt. #607. The Government has filed a Response. Dkt. #615. Mr. Pelayo moves again for reconsideration of the Court's Order denying his Motion for Review of Detention Order, Dkt. #381. In that Order, the Court stated:

There is a presumption of detention in this case because Defendant is facing a ten-year mandatory minimum term of imprisonment. Even if Defendants' new COVID-19 information was not speculative, the Court finds that Defendant's age and lack of any underlying medical conditions would not make him particularly vulnerable or otherwise part of a high-risk group. This is a significant point. Although the parties can debate whether or not the new coronavirus is or will be spreading at the FDC, the Court is not convinced that this constitutes a significant enough risk to this Defendant's health to warrant release given the initial bases for Judge Tsuchida to order detention. See Dkt. #151.

Dkt. #381 at 3.

1 Motions for reconsideration are disfavored. CrR 12(b)(13). The court will ordinarily
2 deny such motions in the absence of a showing of manifest error in the prior ruling or a showing
3 of new facts or legal authority which could not have been brought to its attention earlier with
4 reasonable diligence. *Id.*

5 Mr. Pelayo points to new facts in his Motion rather than error in the prior ruling. These
6 new facts are raised in briefing without citation to any declarations or exhibits. Mr. Pelayo states
7 that there has been an outbreak of COVID-19 at the detention center where he is housed and that
8 inmates are locked down in their cells for most of the day. Dkt. #607 at 2. Mr. Pelayo's briefing
9 states that "the institution no longer is able to maintain quarantine units and now is housing
10 COVID positive inmates within the same units as uninfected inmates." *Id.* at 2 – 3. This bold
11 claim is not only unsupported by citation, but has no source in the briefing, *i.e.* the briefing does
12 not say "Mr. Pelayo has observed" or "according to..." Mr. Pelayo reiterates his complaints
13 about access to counsel given the lockdown conditions at the FDC. *Id.* at 3. He states that he
14 may only view certain "protected" discovery "on DVDs that are kept at the FDC law library, a
15 place he is not allowed to visit." *Id.* at 3. He admits he can still schedule video visits with his
16 counsel but argues that these are inadequate. *Id.*

17 The Government responds that the above assertions "are not accurate." Dkt. #615 at 2.
18 The Government says Mr. Pelayo's housing unit is "not currently on lockdown" and that
19 "COVID-positive inmates are not kept in the same units as uninfected inmates." *Id.* at 3. The
20 source of this information is FDC's legal counsel and the BOP website. *Id.* The Government
21 states that "FDC SeaTac legal counsel has confirmed that inmates with 'protected discovery,'
22 such as Pelayo, have access to the law library." *Id.* No declarations or exhibits are attached.
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1 The Court has not been presented with new “facts” but rather second-hand reports and
2 policy statements. In a typical case the Court would be more interested in the facts on the ground
3 than on what a BOP facility is supposed to be doing. However, given the standard for a motion
4 for reconsideration, the Court’s prior rulings in this case, and the burden on Defendant, the Court
5 concludes that there is no evidence here or reason to change the Court’s analysis above. The
6 Court continues to find “that Defendant’s age and lack of any underlying medical conditions
7 would not make him particularly vulnerable or otherwise part of a high-risk group,” and “the
8 Court is [still] not convinced that this constitutes a significant enough risk to this Defendant’s
9 health to warrant release given the initial bases for Judge Tsuchida to order detention.”
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11 Having reviewed the briefing, along with the remainder of the record, the Court hereby
12 finds and ORDERS that the Third Motion for Reconsideration by Defendant Anthony Pelayo,
13 Dkt. #607, is DENIED.

14 DATED this 20th day of October, 2020.

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17 RICARDO S. MARTINEZ
18 CHIEF UNITED STATES DISTRICT JUDGE
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